

**HOFFMAN, Senior Judge**

Appellant-Petitioner James H. Higgason, Jr., pro se, appeals the trial court's grant of Appellee-Defendant Indiana Department of Correction's ("DOC") motion to dismiss Higgason's small claims complaint. We affirm.

Higgason raises several issues, which we consolidate and restate as whether trial court erred by granting the DOC's motion to dismiss Higgason's complaint.

On March 11, 2004, Higgason filed a small claims complaint for replevin against the DOC in Sullivan Superior Court. In his complaint, Higgason alleged that on August 16, 2002, employees of the DOC confiscated and disposed of some of his personal property, totaling \$343.55, while he was in disciplinary segregation at the Wabash Valley Correctional Facility. On September 14, 2004, the trial court dismissed Higgason's complaint as "frivolous" under Indiana Code § 34-58-1-2 because it was "made to harass the Indiana Department of Correction and its employees and [it] lack[ed] an arguable basis in law and fact." Appellant's Appendix at 8a.

Two days later, on September 16, 2004, the DOC filed a motion to dismiss Higgason's complaint.<sup>1</sup> The DOC alleged that Higgason had failed to follow the statutory requirements of Indiana Code § 34-13-3-7(a), which requires that an offender who makes a claim for compensation for loss of personal property against the DOC must file an administrative claim with the DOC within 180 days of the alleged loss. As part of its motion, the DOC attached two affidavits—one affidavit from the DOC's tort claim administrator, indicating that the DOC had not received a tort claim notice for the August

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<sup>1</sup> Apparently the DOC was unaware that the trial court had dismissed the case two days earlier under Indiana Code § 34-58-1-2.

16, 2002, incident upon which Higgason based his small claims lawsuit; and a second affidavit from the tort claim notice record keeper at the Attorney General's Office, indicating that their office had received a tort claim notice from Higgason relating to an October 10, 2002, incident.

Thereafter, Higgason appealed the trial court's September 2004 dismissal order. On August 25, 2005, we issued an unpublished memorandum decision in which we held that the trial court erred by dismissing Higgason's complaint pursuant to Indiana Code § 34-58-1-2 because this statute, which applies only to cases filed after June 30, 2004, did not apply to Higgason's cause of action, which was filed on March 11, 2004.<sup>2</sup> *See Higgason v. Indiana Dep't of Correction*, No. 77A04-0410-CV-545, slip op. at 3 (Ind. Ct. App. Aug. 25, 2007). Accordingly, we reversed the dismissal of Higgason's small claims complaint and remanded the case to the trial court.

Upon remand, the trial court addressed the DOC's pending motion to dismiss under Indiana Code § 34-13-3-7(a). On October 10, 2006, the trial court entered an order, directing Higgason to file a response to the DOC's motion to dismiss within thirty days, which would have been November 9, 2006. On October 26, 2006, Higgason filed a motion to dismiss the DOC's motion to dismiss and alleged that he had not received a copy of the DOC's motion to dismiss. On October 31, 2006, the trial court entered an order, in which it noted that the DOC had sent Higgason a copy of its motion to dismiss

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<sup>2</sup> We further noted that this Court's screening mechanism designed to curtail future frivolous lawsuits filed by Higgason, *see Higgason v. Stogsdill*, 818 N.E.2d 486, 492 (Ind. Ct. App. 2004), *trans. denied*, was also not applicable to Higgason's complaint because his complaint was filed prior to the imposition of this screening mechanism.

on September 16, 2004. Nevertheless, the trial court sent Higgason another copy of the motion along with the supporting affidavits.

On November 1, 2006, Higgason filed a motion for enlargement of time to respond to the DOC's motion to dismiss and alleged that he needed more time because he did not have a copy of the DOC's motion. On November 3, 2006, the trial court issued an order in which it denied Higgason's request for additional time and noted that the DOC had certified that a copy of the motion to dismiss had been sent to Higgason.

On November 28, 2006, the trial court issued an order and granted the DOC's motion to dismiss. On December 1, 2006, Higgason filed a motion to file a belated response to the DOC's motion to dismiss, and the trial court denied Higgason's motion. Higgason then filed a motion to correct error, which was also denied by the trial court. Higgason now appeals.

Higgason argues that the trial court erred by granting the DOC's motion to dismiss Higgason's small claims complaint. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). The DOC filed its motion to dismiss under Indiana Trial Rule 12(C), which relates to motions for judgment on the pleadings. Pursuant to Indiana Trial Rule 12(C), "[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Here, the trial court did not exclude the affidavits attached to the DOC's motion.

Thus, we will review the trial court's grant of the DOC's motion as a ruling on a motion for summary judgment.

Our standard of review for a trial court's grant of a motion for summary judgment is well settled. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(c); *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970, 973 (Ind. 2001). All facts and reasonable inferences drawn from those facts are construed in favor of the nonmovant. *Id.* Our review of a summary judgment motion is limited to those materials designated to the trial court. *Id.*

The trial court dismissed Higgason's small claims complaint against the DOC because Higgason had failed to comply with Indiana Code § 34-13-3-7, which is the notice provision requirement in the Indiana Tort Claim Act applicable to personal property claims made by offenders.<sup>3</sup> Indiana Code § 34-13-3-7 provides, in relevant part:

(a) *An offender must file an administrative claim with the department of correction to recover compensation for the loss of the offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.*

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars (\$5,000), the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c) . . . .

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<sup>3</sup> An "[o]ffender", for purposes of IC 34-13-3-7, means a person who is committed to the department of correction or was committed to the department of correction." Ind. Code § 34-6-2-89.

(Emphases added).

The plain language of Indiana Code § 34-13-3-7(a) requires an offender to file an administrative claim with the Department of Correction in order to recover compensation for the loss of his personal property. The purpose of the notice requirement is to inform state officials with reasonable certainty of the accident or incident and surrounding circumstances and to advise of the injured party's intent to assert a tort claim so that the State may investigate, determine its possible liability, and prepare a defense to the claim. *See Ind. Dep't of Transp. v. Shelly & Sands, Inc.*, 756 N.E.2d 1063, 1076-77 (Ind. Ct. App. 2001), *trans. denied*. The notice requirements in the tort claim statutes are "to be strictly construed as to giving timely notice to the proper officers, but liberally construed as to whether the notice is sufficiently definite as to time, place, nature, etc. of the injury." *Daugherty v. Dearborn County*, 827 N.E.2d 34, 36 (Ind. Ct. App. 2005), *trans. denied*. Therefore, the requirement in Indiana Code § 34-13-3-7(a) that notice be given to the DOC is to be strictly construed.

Furthermore, a claimant who has an available administrative remedy must pursue that remedy before being allowed access to the courts. *Higgason v. Lemmon*, 818 N.E.2d 500, 503 (Ind. Ct. App. 2004), *trans. denied*. A party's failure to exhaust administrative remedies deprives the trial court of subject matter jurisdiction. *Id.* This policy avoids premature litigation, permits the compilation of an adequate record for judicial review, and affords agencies the opportunity and autonomy to correct their own errors. *Id.*

Here, the DOC's designated evidence included two affidavits: one affidavit from the DOC's tort claim administrator, indicating that the DOC had not received a tort claim

notice for the August 16, 2002, incident upon which Higgason based his small claims lawsuit; and a second affidavit from the tort claim notice record keeper at the Attorney General's Office, indicating that their office had received a tort claim notice from Higgason relating to an October 10, 2002, incident but not the August 2002 incident. Higgason did not file a timely response to the DOC's motion, and accordingly, did not designate any evidence showing that the DOC was precluded from summary judgment in its favor.<sup>4</sup> Because the designated evidence reveals that Higgason failed to file an administrative claim with the DOC within 180 days of his alleged August 2002 date of loss and, thus, did not exhaust his administrative remedy before seeking recourse in the court, we conclude the trial court did not err by granting summary judgment in favor of the DOC and dismissing Higgason's complaint.<sup>5</sup>

Affirmed.

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<sup>4</sup> Higgason contends that the trial court erred by denying his motion for extension of time to file a response to the DOC's motion. However, Higgason has waived any such claim because he has failed to make a cogent argument and failed to support such argument with relevant authority. *See Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding that a party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority), *reh'g denied, trans. denied*.

Waiver notwithstanding, the trial court did not err by denying Higgason's motion for extension of time to respond to the DOC's converted summary judgment motion. We review a trial court's action in altering the time limits on summary judgment for an abuse of discretion. *McGuire v. Century Surety Co.*, 861 N.E.2d 357, 360 (Ind. Ct. App. 2007). Indiana Trial Rule 56(I) provides: "For cause found, the Court may alter any time limit set forth in this rule upon motion made within the applicable time limit." Higgason's extension motion was based his allegation that he did not have a copy of the DOC's motion; however, the DOC certified that a copy of the motion to dismiss had been sent to Higgason. Accordingly, we cannot say that the trial court abused its discretion by denying Higgason's extension motion.

<sup>5</sup> Higgason also suggests that the trial court erred by: (1) waiving its impartiality and revitalizing the DOC's "moot" motion to dismiss upon remand from this Court; (2) failing to specify the date the DOC filed its motion to dismiss when it ordered Higgason to respond to the DOC's motion within thirty days; (3) denying his request to file a belated response to the DOC's motion; and (4) denying his motion to correct error. Higgason has waived any such claims because he has failed to make a cogent argument and failed to support such arguments with relevant authority. *See Lyles*, 834 N.E.2d at 1050.

BAKER, C.J., and FRIEDLANDER, J., concur.